

REMARKS

In the Office Action of July 7, 2010, claims 6, 9 and 24 are pending of which claims 6, 9 and 24 are rejected.

In particular:

- Claims 6, 9 and 24 are rejected under 35 USC 103(a) as being as being unpatentable over Brightbill (US 2003/0204245) in view of Cox et al (US 5,824,040)
- Claims 7 are rejected under 35 USC 103(a) as being unpatentable over Brightbill (US2003/0204245) in view of Cox et al (US 2002/0120327) and further in view of McNamara et al (US 6,004,347)

CLAIM AMENDMENTS

Claim 24 is amended to more particularly define the invention.

We submit that in making these amendments no new subject matter has been added.

DISCUSSION

Claim 24

The claims are generally rejected under 35 USC 103(a) as being unpatentable over Brightbill (US 2003/0204245) in view of Cox et al (US 5,824,040).

We submit that Claim 24, the independent claim defines detailed structure for a particular purpose. The Examiner has drawn our attention to the disclosure of Brightbill and the possibility of covered cells.

We submit that the Examiner is going far beyond the disclosure of Brightbill to support his rejection. Brightbill states, in paragraph [0023], that:

One embodiment of the stent, in accordance with the present invention, is illustrated in FIG. 1 at 100. Stent 100 includes a stent framework 110, a therapeutic coating 120, and a radiopaque marker 130. For clarity, it must be set forth that while the coating 120 is depicted as a shaded region of the entire portion of the stent 100 (in this FIG. as well as in all the other FIGS. of this application), in the preferred embodiment the coating covers only the stent framework and does not also cover the openings or cells there between.

Hence, although shading is shown in Figure 1, for instance, along part of the stent (region 120) and not on the rest of the stent (region 140) there is no suggestion that one portion is covered by a graft material and another portion is not covered, it is just a convenient way of indicating that the struts of the stent have a therapeutic coating over part of their length.

Paragraph [0023] does go on to say that:

Of course, however, the invention should not be read as being limited to only stents having a coated framework per se, i.e. having an open, uncovered cells. The invention may also be used on stents featuring a drug delivery vehicle in which the cells are not open, including sheath wrapped stents (such as those depicted in Froix, U.S. Pat. No. 6,019,789) as well as other delivery matrices (such as those depicted in Kaplan, U.S. Pat. No. 5,342,348). In such embodiments the sheath or other delivery matrices would be disposed on only a portion of the length of the stent.

There is no teaching or suggestion, in these words, that the sheath is at any particular portion of the stent. In fact a person skilled in the art would immediately discount the suggestion that the Brightbill disclosure would relate to therapeutic coated stent with a sheath because the sheath would prevent the therapeutic coating from working against the cell wall as intended.

For the Examiner to deduce from this disclosure that the particular claimed construction of covered stents and uncovered stents as is claimed in the present application goes, we submit, well beyond the teaching of Brightbill and, we submit relies heavily on impermissible hindsight.

Another factor which a skilled person would understand from Brightbill and which would teach directly away from the claimed invention is that Brightbill relates to balloon expandable stents which are used for medical therapeutic applications including intravascular angioplasty and are coated to prevent restenosis and undesirable reactions such as inflammation, infection, thrombosis, and proliferation of cell growth that occludes the passageway into which the stent is deployed.

In significant contradistinction, the present invention is specifically restricted to self expanding stents because of their ability to provide continued expansive pressure to close off a false lumen as discussed in detail in the specification as

lodged. A skilled person would instantly understand that the illustrated and taught stent would not provide that function and would instantly discount Brightbill to solve the problem faced by the inventor.

There is mention in Brightbill paragraph [0003] that a variety of stents exist but there is no specific teaching that other than balloon expandable stents are contemplated for the actual disclosure of this specification. It is clear that all of the teaching of Brightbill relates to balloon expandable stents and that is what a person skilled in the art would understand from it.

Further it is quite clear from the discussion of Brightbill that a single stent comprised of rigidly joined strut sets is all that is contemplated. The Examiner has therefore included the reference Cox et al (US 5,824,040) which shows linking of adjacent stents in a stent assembly. There is not, however, in Brightbill any suggestion or requirement to link stents and hence there is no reason why a skilled person in possession of Brightbill would need to refer to Cox et al. We submit that the link made by the Examiner involves the application of impermissible hindsight.

In summary we submit that there is no disclosure or suggestion in Brightbill of the particular combination of a covered area and an uncovered area as claimed and certainly no suggestion of the use of the device as a treatment device for aortic dissection and particularly the claimed covering to close off a rupture and the uncovered portion to give gradual pressure features to close off a false lumen of the present invention. Further, those features which are deficient in Brightbill are not present in Cox et al.

We submit that for these reasons Claim 24 is patentable over Brightbill (US 2003/0204245) in view of Cox et al (US 5,824,040).

Summary

None of the cited references Cox et al (US 5,824,040), Cox et al (US 2002/0120327), Brightbill (US 2003/0204245) and McNamara et al (US 6,004,347) whether taken singly or in any allowable combination anticipate, teach or suggest the claimed invention.

Overall we submit that all claims are not anticipated and are patentable over the cited references.

The re-examination and reconsideration of this application is respectfully requested and it is further requested that this application be passed to issue.

Although the foregoing discussion is believed to be dispositive of the issues in this case, applicants' attorney requests a telephone interview with the Examiner to further discuss any unresolved issues remaining after the Examiner's consideration of this amendment.

Respectfully submitted,

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